

REMARKS

Claims 1, 3-10, 12-17, 23-25, and 30-32 are pending in this Application with Claims 5, 6, 8, 9, and 23-25 having been withdrawn from consideration by the Examiner. All the claims have been cancelled and new Claims 33-43 have been added. In particular, new Claims 33 and 43 are same as old Claims 1 and 32, respectively with the limitation of old Claim 3 added to each. Claims 34-42 are same as old Claims 4, 7, 10, 12-16, and 31, respectively.

Double Patenting Rejection

Claims 1, 3, 4, 7, 10, 12-17, and 30 (now Claims 33-40) remain provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1-3, 6-11, 15, and 34-36 of copending Application No. 10/427,929.

Claims 1, 3, 4, 7, 10, 12-17, and 30 (now Claims 33-40) also remain provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 25, 28, and 29 of copending Application No. 10/669,251.

Applicant respectfully requests that this issue be deferred until allowable subject matter is indicated.

Rejection under 35 U.S.C. § 112, first paragraph

In the Advisory Action dated April, 1, 2008, the Examiner stated that the “lack of adequate written description and...”lack of enablement are not addressed by the publications submitted 19 March 2008.” In particular, the Examiner’s maintenance of the §112, first paragraph, rejection appears to be that the publications submitted were “not persuasive because (a) emphysema is not conditions indicated in claims 1 and 32 (now Claims 33 and 43)....”

The specification (see, for example, page 4, lines 10-21) clearly shows the disease conditions associated with apoptosis. It follows then by inhibiting apoptosis these diseases can be treated. The specification also clearly shows AAT inhibits apoptosis. Thus, by administering AAT one can inhibit apoptosis.

Accordingly, it is submitted that the specification is fully enabling and the rejection under 35 U.S.C. § 112, first paragraph, is improper and should be withdrawn.

CONCLUSION

In view of the foregoing, Applicants submit that all claims now pending in this Application are in condition for allowance. Therefore, an early Office Action to that effect is earnestly solicited. If the Examiner believes a telephone conference would aid in the prosecution of this case in any way, please call the undersigned at (303) 955-8103.

Respectfully submitted,

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Date: May 30, 2008

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